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March 1, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: September 19, 2006

Case Number: TSO-0434

This Decision concerns the eligibility of XXXXXXXX XXXXX XXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's request for an access authorization should be granted. As set forth in this Decision, I have determined that the individual should not be granted a security clearance at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual requested a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that her access authorization was being denied pending the resolution of certain derogatory information that created substantial doubt regarding her eligibility. This derogatory information is described in a Notification Letter issued to the individual on July 14, 2006, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections f, h, k and j. More specifically, the Notification Letter alleges that the individual has: (1) "[d]eliberately misrepresented, falsified, or omitted significant information from . . . a Questionnaire for National Security Positions [and during] a personnel security interview . . . on a matter regarding eligibility for DOE access authorization," 2) "has an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in [the individual's] judgment and reliability," 3) "has used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances," and 4) "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. §§ 710.8(f), (h), (j) and (k) (Criterion F, Criterion H, Criterion K and Criterion J, respectively). The bases for these concerns are described below.

In reference to Criterion F, the Notification Letter states that the individual intentionally omitted significant information relating to her past use of illegal drugs from a Questionnaire for National Security Positions (QNSP) executed in July 2005, and later during a personal subject interview conducted by an Office of Personnel Management (OPM) investigator. In addition, the Notification Letter states that during a Personnel Security Interview (PSI) conducted on December 29, 2005, the individual stated that the last time she used marijuana was in May 2004, while records obtained from her substance abuse treatment center indicate that the individual tested positive for marijuana use in July 2004.

Under Criteria H and K, the Notification Letter states that on April 28, 2006, the individual was examined by a DOE consultant-psychiatrist (DOE Psychiatrist) who subsequently issued a report in which he diagnosed the individual with Substance Dependence, Cocaine (Cocaine Dependence), With Psychological Dependence, in Sustained Full Remission, an illness which causes, or may cause, a significant defect in judgment or reliability. The DOE Psychiatrist further found that the individual was a user of cocaine and marijuana habitually to excess in 2004. In addition, the individual admitted during her PSI to using a number of other illegal drugs, starting in high school.

Finally, in reference to Criterion J, the Notification Letter states that the DOE Psychiatrist also determined in his psychiatric report that the individual was an abuser of alcohol habitually to excess from 1993 to 2005. The Notification Letter further states in this regard that the individual was advised not to consume alcohol by her substance abuse treatment center after she completed treatment for Cocaine Dependence in July 2004, but she nevertheless resumed drinking in February 2005.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on September 19, 2006, the individual exercised her right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On September 27, 2006, I was appointed as Hearing Officer. I set a hearing date after conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24. At the hearing, the DOE Counsel called the DOE Psychiatrist as DOE Security's sole witness. Apart from testifying on her own behalf, the individual called as witnesses two neighbors who are family friends, her manager, her supervisor, a co-worker and a psychiatrist. The transcript taken at the hearing will be hereinafter cited as "Tr.". Documents submitted by the DOE Counsel in support of the Notification Letter constitute exhibits to the hearing transcript and will be cited as "DOE Exh.". The individual tendered no exhibits.

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position with a DOE contractor in June 2005 and requested a DOE security clearance as a condition of her employment. In her QNSP, dated July 26, 2005, the individual answered "Yes" to question 24(a) regarding whether she had used any illegal drug since age 16 or in the past seven years. The individual then provided additional information that she had used cocaine "several" times from February 2004 to May 2004. However, the individual did not specify that she had used any other illegal drug. On November 1, 2005, the individual was interviewed by an OPM investigator and the individual repeated that she had used no illegal drug other than cocaine. However, a few days later, the individual contacted the OPM investigator and revealed that she had also used marijuana on a regular basis, on an average of once a month, since high school in 1992 until May 2004.

On the basis of the QNSP and background investigation, the individual was summoned by DOE Security to submit to a PSI, conducted on December 29, 2005. During the PSI, the individual provided information regarding her use of other illegal drugs and excessive use of alcohol. The individual was then referred to the DOE Psychiatrist who evaluated the individual on April 28, 2006. Below is a summary of the information

provided during the PSI and psychiatric interview regarding her history of using illegal drugs and consumption of alcohol.

The individual grew up in a household where her parents, particularly her father and sometimes her mother, used marijuana in her presence. The individual began using marijuana in seventh grade on an experimental basis. The individual was an excellent student in both high school and college, receiving a 4.0 grade-point average at both levels of study. However, the individual associated with persons who drank alcohol and used illegal drugs and was easily persuaded to join them. By her junior year in high school, the individual was using marijuana on an average of once a month, and sometimes as many as three or four times a week. The individual's use of marijuana lessened while she was in college, from 1995 to 1999, when she estimates she used marijuana a total of three dozen times. Following college, however, the individual resumed using marijuana on a regular basis with her friends and sometimes her father, until 2004. The individual began using cocaine during her junior year of high school and used cocaine many times while in college. The individual used cocaine on a monthly basis following college until February 2004, when her use of cocaine dramatically escalated, as discussed below. The individual also experimented with other illegal drugs in high school and college, including hashish, mushrooms, LSD, methamphetamine, and ecstasy.

The individual has been involved in three drug-related legal incidents. In 1994, during her junior year of high school, the individual was suspended from school after she was caught smoking marijuana in a car with two friends. In 1996, while in college, the individual was arrested and charged with Possession of Drug Paraphernalia. Finally, the individual was again charged with Possession of Drug Paraphernalia in March 2004. The charges were ultimately dismissed in both of the two latter incidents.

Regarding her use of alcohol, the individual stated that she began drinking socially, once a month or once every two months, during her sophomore year of high school. The individual stated at the PSI that during her junior and senior years of high school, she drank to become intoxicated almost every week, and further indicated that this drinking pattern continued during college. During the psychiatric interview, however, the individual reduced the estimates of her frequency of intoxication and informed the DOE Psychiatrist that she was intoxicated once a month during her latter years of high school, and once every other month while in college. The individual also told the DOE Psychiatrist that from 1999 to 2003, she became intoxicated once a month. The individual drank more heavily in 2003 and particularly during 2004 when she often drank in combination with her cocaine use. During her heaviest period of cocaine use in 2004, the individual drank to intoxication two to three times a week.

While the individual used cocaine on a monthly basis prior to 2004, she had only snorted the drug. However, in February 2004, two of her friends persuaded her to

inject cocaine intravenously, and the individual instantly acquired an extreme addiction to the drug. From February 2004 until May 2004, the individual's intravenous use of cocaine grew to the point that she was injecting herself almost daily, as many as five times on some days. During this period, the individual spent from \$100 to \$150 a day for cocaine. The individual borrowed against her credit cards and stole \$5000 from her mother's checking account. In total, the individual spent approximately \$10,000 during a three-month period to maintain her cocaine habit. The individual also smoked marijuana daily and drank excessive amounts of alcohol to come down from her cocaine binges and to sleep. In late April 2004, the individual began to have suicidal ideations and had a cocaine overdose resulting in a seizure.

In early May 2004, the individual recognized that she needed help to combat her cocaine addiction and, with the help of her family, she entered into an intensive outpatient (IOP) substance abuse treatment program (IOP Program) which she completed in July 2004. The individual moved back home and has resided with her parents since beginning treatment. In June 2004, the individual had an incident where she had cocaine cravings and became depressed. In reaction to these feelings, the individual drank half of a fifth bottle of tequila she found in her mother's liquor cabinet, became very intoxicated and was unable to participate in her IOP Program that day. The individual asserts that she has used no illegal drugs since beginning the IOP Program in early May 2004. However, the individual's IOP Program records indicate that she tested positive for marijuana in July 2004. In his report, the DOE Psychiatrist states that the individual could not possibly have tested positive for marijuana in July 2004 if, in fact, her last marijuana use was in early May 2004.

After completing the IOP Program in late July 2004, the individual was placed in an aftercare program that met once a week for one month. The individual was also directed by the IOP Program counselors to begin attending Cocaine Users Anonymous (CA), Narcotics Anonymous (NA) or Alcoholics Anonymous (AA) to supplement her aftercare, and on an ongoing basis after completing aftercare to support her in maintaining abstinence from all non-prescribed controlled substances. In addition, the IOP Program counselors advised the individual that she should not consume alcohol, in view of her history of abusing alcohol in combination with illegal drugs.

The individual tried alternatively attending AA, NA and CA for approximately six months after completing her aftercare program. At one stage, the individual was attending CA meetings three times a week. However, the individual has no religious convictions and never felt comfortable with the spiritual aspect of the AA/NA/CA regimen. In addition, the individual had trouble finding a meeting that was convenient since she was still living with her parents who reside in a rural area. The individual therefore never became involved in the 12-step program of AA, NA or CA, and did not obtain a sponsor. In February 2005, the individual stopped attending the meetings altogether and, at the same time, the individual decided to resume drinking.

Upon resuming drinking, the individual typically would have only a few glasses of wine once or twice a week, during dinner at home with her parents. However, there were later instances when the individual drank to the point of intoxication. During this time period, the individual's mother expressed concern to the individual that she was drinking too much, knowing that the IOP Program had admonished the individual that she should not drink at all. During the psychiatric interview, the individual told the DOE Psychiatrist that during the preceding fifteen months, from February 2005 until April 2006, she drank once a week and that she was intoxicated two or three times. According to the individual, her last incident of intoxication was in late November 2005 when she reportedly consumed two glasses of wine and a few shots of whiskey. After coming to work the next morning, two of the individual's co-workers reported to their manager that the individual smelled of alcohol. The individual's manager met with her a few hours later, determined that the individual was not intoxicated at the time and allowed her to stay at work.

In his report, the DOE Psychiatrist diagnosed the individual with Cocaine Dependence, in Sustained Full Remission, based upon criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR), which is a mental condition which causes or may cause a significant defect in the individual's judgment or reliability. Despite the modifier "in sustained full remission," the DOE Psychiatrist further determined that the individual was not showing adequate evidence of rehabilitation or reformation since she was still using a habit forming substance, alcohol. In this regard, the DOE Psychiatrist determined on the basis of his interview and review of the individual's security file that the individual was a user of alcohol habitually to excess from 1993 through 2005.

The DOE Psychiatrist concludes in his report that in order to show adequate evidence of rehabilitation or reformation from her Cocaine Dependence, the individual must be abstinent from all habit forming substances, including alcohol. More specifically, as adequate evidence of rehabilitation, the DOE Psychiatrist recommends that the individual get actively involved in working a 12-step program (AA, CA or NA), which includes attending at least 200 meetings over a one to two-year period with the assistance of a sponsor, while remaining abstinent from all non-prescribed, habit forming substances, including alcohol.

In the alternative, as adequate evidence of reformation, if the individual elects not to become involved in a 12-step program, the DOE Psychiatrist recommends that the individual be abstinent from all habit forming substances, including alcohol, for a period of five years. The DOE Psychiatrist opines finally that the individual must maintain a substance free lifestyle for the rest of her life, and that any alcohol use in the future will be evidence that she is not showing adequate evidence of rehabilitation or reformation.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See Personnel Security Hearing, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual should not be granted an access authorization at this time since I am unable to conclude that such granting would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criterion F; Falsification

In the Notification Letter, DOE Security raises two incidents of falsification on the part of the individual. First, the individual failed to disclose on her July 26, 2005 QNSP and during her initial OPM investigation interview all of her past uses of illegal drugs, but only revealed her intravenous use of cocaine during the three-month period of February through April 2004. See DOE Exh. 11 (QNSP, question no. 24). Second, the

individual stated during the PSI conducted on December 29, 2005, that the last time she used marijuana was before she entered into rehabilitation for her cocaine dependency, in early May 2004. See DOE Exh. 12 (PSI) at 45. However, the IOP Program records show that the individual tested positive for marijuana in July 2004. According to the DOE Psychiatrist, “there is no way that the marijuana detected on 07/08/04 had been from use prior to 05/10/04, when she entered the Intensive Outpatient Program.” DOE Exh. 7 (DOE Psychiatrist’s Report) at 27, note 42.

Based upon my review of the record, I find that DOE Security properly invoked Criterion F in this case. The individual admitted during the PSI that she intentionally omitted information regarding her past use of illegal drugs from her QNSP, during her initial OPM interview, and partially during her second OPM interview, because she was scared, ashamed and concerned that it would bear negatively on her request for a security clearance. See DOE Exh. 12 at 14-15. In addition, the individual’s positive drug test for marijuana in July 2004 appears to be contrary to her assertion that she has not used any illegal drugs after being admitted to the IOP Program. Such deliberate deception raises serious issues with regard to the individual’s honesty, reliability and trustworthiness. Tr. at 35. As observed in similar cases, the DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. See, e.g., Personnel Security Hearing, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,515 (1995); Personnel Security Hearing, Case No. VSO-0281, 27 DOE ¶ 82,821 at 85,915 (1999), *aff’d*, 27 DOE ¶ 83,030 (2000). For the reasons below, I find that the individual has failed to sufficiently mitigate the security concerns raised under Criterion F.

At the hearing, the individual acknowledged her bad judgment in intentionally not listing all of her prior drug use on her QNSP. The individual stated that: “I should have included everything. Part of what was intimidating was there were only two lines there. That wasn’t anywhere near enough. . . . [T]he thought process really was, ‘How can I list everything that I’ve done? I don’t know exact dates. . . . So I made the decision to just include what I had a problem with, and so I listed the cocaine and I listed the period of time which I was using it IV. If I were to fill this out again, I would do an addendum, I would include all of the drugs, even if it was only one time.” Tr. at 155-57. The individual also acknowledged that she initially withheld information from the OPM investigator regarding the full extent of her prior drug use. Again, the individual revealed only her intravenous use of cocaine in 2004, although the investigator asked her if she had previously used any illegal drugs. The individual asserted at the hearing, however, that after the initial interview: “I felt guilty that I hadn’t disclosed everything. I knew it was wrong, and on my own recognizance, I wanted – I called and said ‘Look, we need to talk again, I don’t – I don’t think we covered everything.” Tr. at 158. The individual then revealed to the OPM investigator that she had used marijuana on a regular basis since 1994. The individual denied at

the hearing that she called the OPM investigator after being confronted with her prior dishonesty, claiming that she did so out of her own conscience. Tr. at 158-59. The individual's manager, supervisor and friends consider the individual to be an honest person, and uniformly expressed their opinion that her withholding of information on her QNSP was not typical of her character. See Tr. at 50-51, 76, 88, 112.

However, I am unpersuaded that the individual's explanations and the testimony of her witnesses significantly diminish the concerns associated with her deliberate falsifications and omissions regarding her past use of illegal drugs. I find disingenuous the individual's claim that she did not disclose all of her prior drug use because she could not recall all the incidents and dates of usage, and there was insufficient room on the form. The instructions for completing the QNSP clearly state that the applicant should provide estimates and approximations to the best of their ability and attach supplemental forms, as necessary. The individual in this case is very intelligent and highly educated, with a graduate degree in a demanding field of study. I cannot accept that the individual was "intimidated" by the QNSP form. During the PSI, the individual admitted that she intentionally did not provide all of the information regarding her prior drug use because she was scared, ashamed and knew it would adversely affect her request for a security clearance. The alternative explanation proffered at the hearing shows that the individual has not yet accepted responsibility for her falsifications, and erodes my assessment of her honesty and trustworthiness.

In addition, the evidence does not support the individual's assertion it was solely her conscience and desire to correct the record that led her to contact the OPM investigator and disclose her marijuana use after the initial interview. Rather, the PSI indicates that the individual decided to amend her statements to the OPM investigator after she discovered that her neighbor had informed the OPM investigator of her marijuana use. The conversation between the individual (I) and the personnel security specialist (PS) conducting the PSI reads as follows:

PS: [D]id you talk to somebody after your interview regarding the interview and the fact that you did not list the marijuana?

I: Well I talked to my neighbor, yeah.

...

PS: And did he give you further advice?

I: He just said that they had talked about it.

PS: Okay. So, in essence you found out that he had also talked about your marijuana use to the investigator –

I: Yeah.

PS: – and so, that was another factor as to why you decided to come forward with the marijuana use?

I: Yes. That and I just, felt I needed to disclose it.

DOE Exh. 12 at 15-16.^{2/} I further note that upon contacting the OPM investigator, the individual chose to disclose only her marijuana use and still did not reveal her use of cocaine prior to 2004, or her past use of other illegal drugs. See Tr. at 158. These continued omissions belie the individual's representation at the hearing that she contacted the OPM investigator of her own volition because she "felt guilty" and wanted to set the record straight. *Id.*^{3/} Ultimately, the individual did disclose all of her prior drug use to the personnel security specialist during the PSI. However, I still am left with lingering doubts about her honesty in view of her misleading statements regarding the circumstances under which she contacted the OPM investigator.^{4/}

Regarding her July 2004 positive drug test for marijuana, the individual adhered to her claim during her testimony that she has not used marijuana or any other illegal substance since starting the IOP Program in early May 2004. The individual had no explanation for failing the drug test in July 2004, other than: "I don't remember using past May. I was around it – while in the rehab, I was around it at the job site when I was working for my dad. My dad's employees would smoke after work. I wouldn't partake, but I was around it. Marijuana takes up to eight weeks, typically, to leave your system, especially when you consider I had been using it for . . . over ten years. So I had a lot of residual." Tr. at 183. According to the DOE Psychiatrist's report, however, "If one is a daily user of marijuana, one can have marijuana in one's urine

^{2/} The neighbor referenced during the PSI testified at the hearing and confirmed that he has seen the individual use marijuana on a number of times at her parents' home, where recreational use of marijuana was open and prevalent on social occasions. Tr. at 33-34, 40.

^{3/} When asked at the PSI why she had not revealed her cocaine use prior to 2004 to the OPM investigator, the individual responded: "I don't know. We talked about what I went to rehab for, which was a different kind of cocaine use. I was using it intravenously during those three months and previous to that it was, uh, social and not very often and so I didn't disclose it." *Id.* at 21. However, the individual later stated during the PSI that she snorted cocaine on an average of once a month since 1994, and told the DOE Psychiatrist that her use of cocaine increased during 2003 when she couldn't find work. DOE Exh. 12 at 23; DOE Exh. 7 at 30.

^{4/} While not included among the Criterion F concerns in the Notification Letter, I am also disturbed by the individual's decision not to list her drug-related arrests in response to question 23(d) of the QNSP. Information received by DOE Security showed that the individual has been arrested twice for Possession of Drug Paraphernalia, in March 2004 and in 1996 while in college. Regarding the 2004 incident, the individual explained during the PSI that she was at the house of a friend who was arrested and that she was "pretty high" and did not realize that she also had been charged. DOE Exh. 12 at 71-75. The individual admitted that she had to go to court pursuant to the 1996 arrest, yet stated during the PSI that she did not list the arrest on her QNSP because "I didn't even think about that." *Id.* at 76.

drug test for two or three weeks. However, if she went into rehab in May and had marijuana in her urine in July, it is within the realm of medical probability (i.e., 95% certain) that the positive urine drug test in July was from the use of marijuana in July.” DOE Exh. 7 at 10, note 17.

While there is no conclusive evidence on this matter, I am inclined to believe that the individual is not being truthful and did use marijuana subsequent to May 2004. I note that the IOP Program “Progress Notes,” reproduced in part in the DOE Psychiatrist’s report, state: “08/10/04: Discharge Summary: . . . never relapsed into cocaine use but did get drunk once and smoked pot toward end of her program . . .” The incident of getting “drunk” mentioned in the Discharge Summary occurred on June 30, 2004 when the individual consumed half of a fifth bottle of tequila at her parents’ home. In describing this incident at the hearing, the individual stated: “I got depressed, I was having cravings, I was home alone, so I snuck it.” Tr. at 165. In view of her positive drug test for marijuana, the individual’s long history of marijuana use, the ready availability of marijuana at home and where she worked, and the impulses which led her to consume half of a fifth bottle of tequila to combat her cocaine cravings, I find it more likely than not that the individual did in fact use marijuana after May 2004, prior to completing her IOP Program. Accordingly, I find that the individual has not resolved the Criterion F concerns regarding this matter.

B. Criteria H and K; Mental Condition, Illegal Drug Use

The record contains substantial evidence in support of the concerns raised in the Notification Letter under Criteria H and K. With respect to Criterion H, the DOE Psychiatrist diagnosed the individual with Cocaine Dependence, in Sustained Full Remission, based upon criteria set forth in the DSM-IV TR. See DOE Exh. 7 at 33.^{5/} The IOP Program also diagnosed the individual with Cocaine Dependence, and the individual’s psychiatrist (Individual’s Psychiatrist) agrees with this diagnosis. See DOE Exh. 12 at 51; Tr. at 191. By the individual’s own admission, her cocaine addiction reached an extreme level during her period of intravenous use from February through April 2004. Tr. at 141-42, 149. The DOE Psychiatrist observed during his

^{5/} The *DSM-IV TR* generally provides that a diagnosis of Substance Dependence is supported when the individual manifests three or more of the following behaviors occurring at any time within the same twelve-month period: 1) increased tolerance, 2) withdrawal, 3) substance often consumed in larger amounts or over a longer period than intended; 4) persistent desire or unsuccessful efforts to cut down, 5) great deal of time spent in activities to obtain the substance; 6) important social, occupational, or recreational activities given up or reduced, and 7) continued use despite physical or psychological problem caused or exacerbated by use of the substance. In the present case, the DOE Psychiatrist determined that the individual met all seven of the diagnostic during her period of intravenous cocaine use in 2004. See DOE Exh. 7 at 33.

testimony: “[The individual] had a very, very severe cocaine problem. You know, I’ve done 1,500 of these, and [the individual] had the worst cocaine problem of any security clearance person I ever evaluated . . . she was using almost \$5,000 a month in cocaine.” Tr. at 211.

In addition, the individual now readily admits that she used marijuana on a regular basis since high school, and on a daily basis in early 2004 when her cocaine use escalated. See DOE Exh. 7 at 24-28, 35; Tr. at 19-20. The individual also admitted to using a number of other illegal drugs. DOE Exh. 7 at 18-21; Tr. at 23-26. Thus, I find that Criterion K was rightly applied in this case. Illegal drug use raises a security concern for the DOE for it reflects a deliberate disregard for state and federal laws prohibiting such use. Tr. at 74. “The drug user puts his own judgment above the requirements of the laws, by picking and choosing which laws he will obey or not obey. It is the further concern of the DOE that the drug abuser might also pick and choose which DOE security regulations he will obey or not obey with respect to protection of classified information.” Personnel Security Hearing, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,512 (1995); see Personnel Security Hearing, Case No. VSO-0283, 27 DOE ¶ 82,822 (1999).

At the hearing, the individual was open in discussing her history of illegal drug use starting in high school and when at home from college; according to the individual, “I never really said no.” Tr. at 140. The individual’s use of drugs culminated in her extreme addiction to intravenous use of cocaine from February through April 2004: “[A]s soon as I came down, I wanted it again and I wanted it again.” Tr. at 141. The individual was moving in describing her despair at the depth of her cocaine addiction: “The low was so low – there is nothing in my life that could ever happen that would invoke me to go to that place again. It was the worst place I’ve ever been.” Tr. at 149. The individual was also graphic in describing the intense, debilitating withdrawal symptoms she experienced when she stopped using cocaine and began the IOP Program.^{6/}

According to the individual, she has used no illegal drugs since she entered the IOP Program on May 10, 2004, Tr. at 164, and she was adamant in stating her intention to never use drugs again: “I’m not ever going to get high again . . . I have absolutely no desire to go down – you don’t know how strongly I feel about that.” Tr. at 175. The individual further asserted that she has the strong support of her family and her boyfriend, who is also her supervisor, and that she now has a stable lifestyle to support her continued abstinence from illegal drugs: “I have never been as happy as I am now,

^{6/} The IOP Program is generally comprised of nightly group therapy session, three nights a week over a six-week period. The individual clarified at the hearing, however, that “I actually attended the IOP for about eight weeks, instead of the six. I had expressed concerns to the counselors that I wasn’t really ready to be out.” Tr. at 143.

having sobered up, and I'm seeing what my true potentials are. I am successful at work . . . I'm at a better place in my life than I have ever been, and I attribute it solely to getting off the drugs." Tr. at 162-63; see also Tr. at 174.

The individual's neighbor, a close family friend, corroborated that there has been no indication that the individual has used any illegal drugs since going to rehabilitation in 2004. Tr. at 49. The neighbor testified: "I've never seen anybody do a turnaround like she's done a turnaround. I've known lots of people that – had problems with drugs and alcohol, but [the individual] pretty much dropped it like a brick." Tr. at 38. Another friend and neighbor testified that he spoke to the individual after she entered the IOP Program and moved back home with her parents, and he was impressed by her resolve to not use illegal drugs again. Tr. at 89-90. The individual and her supervisor became friends after she began working for the contractor, started dating after several months, and were considering engagement at the time of the hearing. Tr. at 119-20. The supervisor was forceful in expressing his complete lack of tolerance for the use of illegal drugs. Tr. at 126-27. He does not believe that the individual will ever use illegal drugs again: "I think the likelihood of her going back, given everything that it's cost her, is extremely unlikely, and so I don't see that as a significant risk." Tr. at 127.

The Individual's Psychiatrist performed a psychiatric evaluation of the individual on November 4, 2006, approximately one month prior to the hearing, after reviewing the report of the DOE Psychiatrist. Tr. at 191. The Individual's Psychiatrist believes that several factors weigh in favor of a good prognosis for the individual maintaining her abstinence from illegal drugs, including that the individual: (1) "self-disclosed" her problem, by calling her parents in May 2004 and telling them "I need help," Tr. at 193, (2) has "an extremely strong support system at this point," Tr. at 194, and (3) "sought treatment on her own." Id. The Individual's Psychiatrist therefore expressed his opinion that there is a "low" probability that the individual will relapse into cocaine use. Tr. at 196. When pressed further, the Individual's Psychiatrist opined that her risk of relapse is "very low . . . I mean, lifetime, less than two percent." Tr. at 197.

Notwithstanding, the DOE Psychiatrist stated his opinion that "what I've heard is that there is evidence of reformation, but to me it's not adequate." Tr. at 211. Noting the severity of the individual's cocaine addiction in 2002, the DOE Psychiatrist continued to have serious reservations about the individual's use of alcohol: "I believe strongly that if you're dependent on a substance, you cannot use any substance, or it increases your risk of returning, you know, to dependence on your substance of choice . . . She has had significant alcohol problems." Tr. at 211-12. The DOE Psychiatrist expressed concern that the individual was reported by two co-workers in late November 2005 for coming to work with alcohol on her breath. Tr. at 212. The DOE Psychiatrist stated in conclusion that in order to establish evidence of adequate rehabilitation or reformation, the individual needed to be involved in a 12-Step program (AA, NA or CA) or possibly an alternative treatment program, and remain abstinent from all

substances, including alcohol, for an additional year. Tr. at 216-17. The DOE Psychiatrist disagreed with the opinion of the Individual's Psychiatrist that she had a very low (2%) probability of relapse at the time of the hearing, stating that: "I would say her risk of relapse in the next five years for either alcohol or cocaine is perhaps 25 percent." Tr. at 218.

It is clear from the DOE Psychiatrist's report and his testimony that in his opinion, the individual's rehabilitation from cocaine dependence and her continued use of alcohol are inseparably intertwined. While the Individual's Psychiatrist disagreed with the DOE Psychiatrist regarding the sufficiency of her rehabilitation and reformation, he agreed that the individual's use of cocaine and alcohol were closely connected, testifying that: "I also think that the alcohol issue was very much related to the cocaine use, and I would agree . . . with [the DOE Psychiatrist] that it's probably a good idea that that situation be under control, at the very least, or eliminated, just because – mainly because of the cocaine dependence issue." Tr. at 191. Thus, prior to reaching a finding on whether the individual has sufficiently mitigated the security concerns associated with her cocaine dependency and past use of illegal drugs, under Criteria H and K, I find it necessary to consider the evidence presented in the record concerning the individual's use of alcohol.

C. Criterion J; Habitual Excessive Use of Alcohol

In addition to diagnosing the individual with Cocaine Dependence, the DOE Psychiatrist determined that the individual was a user of alcohol habitually to excess from 1993 to 2005. DOE Exh. 7 at 34.^{7/} I again find ample evidence in the record to support the finding of the DOE Psychiatrist. The individual's admitted history of alcohol use is discussed in the factual summary portion of this decision. At the hearing, the individual affirmed the information provided to the DOE Psychiatrist that during 2003 and until entering cocaine rehabilitation in May 2004, she drank to intoxication on an average of two to three times a week. Tr. at 185.^{8/} The individual's

^{7/} While somewhat related, the excessive use of alcohol raises different security concerns than use of illegal drugs. In other DOE security clearance proceedings, it has been observed that the excessive use of alcohol might impair an individual's judgment and reliability, and ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82, 803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995).

^{8/} The individual's neighbor and close family friend testified that during this time period, the
(continued...)

drinking after she completed the IOP Program warrants greater examination.

The individual was advised by her IOP Program counselors to remain in aftercare (AA, NA or CA) and not to consume alcohol because she has “addictive tendencies.” DOE Exh. 12 at 52, 111-12. Notwithstanding, the individual decided to cease aftercare in February 2005, and she also began drinking again. The individual reported to the DOE Psychiatrist that she was intoxicated two to three times from February 2005 until the psychiatric interview in April 2006. See DOE Exh. 7 at 31. However, the record indicates that the individual was minimizing her use of alcohol during that time period. During the PSI, the individual admitted that there was a time during the summer of 2005 when “I was drinking too much . . . I was drinking, uh, probably a pint [of peppermint schnapps] . . . every three days,” and her mother became concerned about her drinking. DOE Exh. 12 at 105. Beside her admitted incident of intoxication in November 2005, when she reported to work smelling of alcohol, a co-worker who testified recalled an earlier incident, in late summer 2005, when she “might have had too much” at a card party and was advised not to drive home. Tr. at 104. At the hearing, the individual initially stated that she doesn’t have a problem with alcohol. Tr. at 177. Under further cross-examination, however, the individual stated: “[W]hen I drink, I would typically drink more than I should. . . . When I drink, I took it a little farther than just social, so I guess that would classify as having a slight problem.” Tr. at 177-78.

The individual testified that her last consumption of alcohol was in April 2006, eight months prior to the hearing. Tr. at 163-64. The individual’s supervisor (also her boyfriend) spends a lot of time with the individual and corroborated her testimony, testifying that in April 2006, the individual told him “that’s my last drink” and he has not seen her consume any alcohol since that time. Tr. at 121. According to the individual, she had no difficulty giving up drinking. Tr. at 150. However, the individual did not rule out drinking again, stating: “Once I’ve had kids, if I feel like having a glass of wine with dinner, that would be nice. I’d like to be able to have a toast of champagne at my wedding, but not drink.” Tr. at 175.

Similar to his view regarding the individual’s chance of relapsing into cocaine use, the Individual’s Psychiatrist believes that there is only a negligible possibility that the

8/ (...continued)

individual became very intoxicated at several family gatherings: “[T]here was a period of time where it was very severe, and we were all very concerned about how things were going for her . . . [The individual] would drink to the point to where she would become – extremely emotional, she’d be extremely teary. . . . It would be real obvious that she’d had too much.” Tr. at 34-35.

individual will relapse into excessive use of alcohol.^{9/} The Individual's Psychiatrist accepted the view of the DOE Psychiatrist that use of alcohol, particularly excessive use of alcohol, increases the possibility that the individual will relapse into cocaine use: "[W]hatever you want to call it, habitually to excess, alcohol abuse, problem drinking, symptomatic alcohol use, . . . it's going to make the risk of cocaine higher." Tr. at 203. The Individual's Psychiatrist opined, however, that there is a "lower than five percent" probability that the individual will return to that form of drinking. Tr. at 204. The Individual's Psychiatrist further disagreed with the DOE Psychiatrist's view that the individual requires additional treatment opining that "I don't think it's mandatory at this point." Id. As noted above, the DOE Psychiatrist stated his view that there is a 25% probability^{10/} that the individual will relapse into alcohol or cocaine use in the absence of treatment coupled with an additional year of abstinence. Tr. at 218. The DOE Psychiatrist was also concerned by the individual's statement that she may choose to drink some day in the future: "I really believe that if you're substance dependent, you shouldn't have any alcohol at all." Tr. at 219.

I have carefully considered the evidence and testimony presented in this case. Taking everything into consideration, I find that the individual's use of alcohol habitually to excess cannot be disassociated from her cocaine dependency and life-long pattern of abusing controlled substances. It is clear from the record of this case that the individual drank excessively, and used cocaine, marijuana and other illegal drugs starting in high school. During 2003 and particularly in early 2004, she smoked marijuana almost daily and was intoxicated two to three times a week to offset her increasing use of cocaine. I was moved by the individual's testimony that she was so devastated by her extreme cocaine addiction in 2004, physically, emotionally and financially, that she will never use cocaine again. However, I am disturbed by the individual's decision to resume drinking in February 2005, in contravention of the clear

^{9/} The Individual's Psychiatrist expressed this opinion although, after listening to the testimony of other witnesses, he observed that the individual had not been completely candid with him regarding the extent of her alcohol use: "Maybe with the alcohol, there was a little bit of a problem, in terms of all the information I have; that may have been underestimated to some degree. Some examples of that are . . . [her neighbor] had seen her intoxicated on some occasions, this episode that she talked about now about the card game, and then the issue at work. So there are some things that came up that were on the newer side to me here today about alcohol." Tr. at 192.

^{10/} In making this estimate, the DOE Psychiatrist took into account the individual's eight months of abstinence at the time of the hearing. This estimate is considerably lower than the probability of relapse set forth in the DOE Psychiatrist's report: "In my opinion, since she is presumably not using cocaine and marijuana, over the next five years her risk of relapsing into drinking habitually to excess, which she has done from 1993 to 2005, is greater than 50% or more likely than not." DOE Exh. 7 at 34.

instructions of her IOP Program counselors, and then falling again into a pattern of drinking habitually to excess. This demonstrates that while the individual may be free of cocaine, she has not sufficiently overcome her tendency to abuse controlled substances, formed over many years.

Thus, I agree with the position of the DOE Psychiatrist that the individual must be abstinent from all controlled substances for a sustained period of time in order to show adequate reformation and rehabilitation. I do not necessarily accept the DOE Psychiatrist's recommendation that the individual must have additional treatment with one year of complete abstinence. However, I cannot find that the individual has overcome the security concerns under Criteria H, K and J with no additional treatment and only eight months of complete abstinence at the time of the hearing. Under the circumstances of this case, I find an unacceptable security risk remains that the individual will relapse into habitual use of an illegal drug, alcohol or other controlled substance. Section 710.1(a) provides that "[a]ny doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." 10 C.F.R. § 710.7(a).

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(f), (h), (k) and (j) in denying the individual's request for an access authorization. For the reasons I have described above, I find that the individual has failed to sufficiently mitigate the security concerns associated with her intentional falsification of information provided to DOE Security, her past use of illegal drugs and habitual use of alcohol to excess. I am therefore unable to find that granting the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's request for an access authorization should be denied at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: March 1, 2007